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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,559	03/23/2004	George Wyatt Prejean	AD7001 US NA	2566

23906 7590 04/04/2006

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EXAMINER

SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,559

Applicant(s)

PREJEAN, GEORGE WYATT

Examiner

Peter Szekely

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 6 is/are allowed.
- 6) ☒ Claim(s) 1, 7, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 2-4, 8 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/30/04, 3/23/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 7 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over BASF EP 0 106 999, in view of Decroix 4,650,820, further in view of Puzic et al. 6,414,820.

3. BASF discloses a tubular reactor produced ethylene-n-butyl acrylate copolymer, which is suitable for addition to bitumens. See Abstract. Decroix ('820) teaches that the customary amount of ethylene-alkyl acrylate added to bitumens is 1-5%. See Abstract. Puzic et al. recite the addition of polyphosphoric and superphosphoric acid to ethylene-alkyl acrylate modified asphalt, which results in the composition having enhanced high service temperature performance properties. See Abstract and claim 1. It would have been obvious to one having ordinary skill in the art; at the time the invention was made, to add the polymer to the asphalt at the same concentration as Decroix in order to have an excellent Fraass point and to add the acids of Puzic et al. for the reason above.

4. Claims 1, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decroix 4,451,598, in view of Puzic et al 6,414,056.

5. Puzic et al. has been described previously. Decroix ('598) reveals 35-95% bitumen and 5-65% ethylene-alkyl acrylate copolymer in claim 1. In examples 1 and 2

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Decroix ('598) shows a process of polymerization wherein comonomer replacement is achieved by multiple zone introduction of reactant comonomer under a pressure of 1,600 bars. These conditions, according to applicant's specification of page 9, lines 14-19 yield a product equivalent to the one from tubular reactors. Accordingly, it would have been obvious to one having ordinary skill in the art; at the time the invention was made, to add the acid of Puzic et al., for the reasons given in paragraph #3, to the composition of Decroix ('598), which has the same properties as applicant's composition.

Allowable Subject Matter

6. Claims 5 and 6 are allowed.
7. Claims 2-4, 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
3/31/06